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No. 226

Supreme Court of the United States

OCTOBER TERM, 1952

J. LAURITZEN, *Petitioner*,

v.

EVALD JOHANN LARSEN, *Plaintiff-Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE ROYAL DANISH GOVERNMENT, AS AMICUS CURIAE

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Statute:

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The Royal Danish Government, having obtained and filed written consent of counsel for the petitioner and of counsel for the plaintiff-respondent, respectfully submits this brief as *amicus curiae*.

JURISDICTION

The final judgment of the United States Court of Appeals for the Second Circuit was entered on May 2, 1952, and appears on pages 129-130 of the Record. The

petition for a writ of certiorari was filed on July 25, 1952, and was granted October 13, 1952 (R. 132). The jurisdiction of this Court is conferred by Title 28, United States Code, Section 1254.

STATEMENT OF THE FACTS

The respondent, Evald Johann Larsen, is a citizen and resident of Denmark and the holder of a certificate issued by the Royal Danish Government qualifying him as an able-bodied seaman (R. 16, 23). On July 25, 1946, while temporarily in the port of New York, Larsen signed shipping articles by which he agreed to serve aboard the S. S. Randa for a voyage to "South America and other places" as an able-bodied seaman at the standard rate of pay agreed upon by the Danish Seaman's Union (R. 16, 45, 46). The S. S. Randa was a steamship flying the Danish flag, registered in Denmark with Copenhagen as its home port, and was owned and operated by petitioner, J. Lauritzen (R. 16, 45). According to the terms of the shipping articles which Larsen signed, the terms and conditions of employment were to be controlled by "the regulations contained in the [Danish] Seaman's Law" (R. 45).[1]

The S. S. Randa sailed from New York with Larsen aboard and, after visiting several South American ports, arrived in the harbor of Havana, Cuba (R. 25, 26). On October 7, 1946, while the vessel was still in Havana, Larsen sustained injuries to his left wrist and left ankle as the result of a fall into the hold of the vessel while engaged in inserting hatch boards with a fellow seaman (R. 26, 27, 33-34).

[1] See stipulation of counsel on English translation of portions of the articles, which stipulation was filed with this Court on November 24, 1952.

Larsen was hospitalized in Havana, returned to New York, was hospitalized there, and given out-patient treatment in Brooklyn, New York until January 9, 1947, all at petitioner's expense (R. 16, 49). In addition, petitioner paid Larsen all wages due him up to the date of the accident, the seven days' additional wages to which Larsen was entitled under Danish maritime law, and one month's maintenance and subsistence while he was undergoing out-patient treatment in New York (R. 16, 20, 39-40, 90-92). On January 9, 1947, Larsen was declared fit for duty, and returned to work as a seaman on January 27, 1947 (R. 16, 40-41).

This action was commenced in the United States District Court for the Southern District of New York on May 6, 1947 (R. 3). On December 7, 1951, the jury returned a verdict in favor of Larsen (R. 115-116). Petitioner's several motions to dismiss on the grounds that the court lacked jurisdiction and that Danish law, rather than the Jones Act,[1] was applicable were denied (R. 61, 97, 116-117).

On May 2, 1952, the United States Court of Appeals for the Second Circuit affirmed the judgment of the District Court, per curiam, on the authority of *Kyriakos* v. *Goulandris*, 151 F. 2d 132 (2d Cir. 1945) and *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597, (2d Cir. 1950), *cert. denied*, 341 U.S. 915 (1951), (R. 127-128).

INTEREST OF THE ROYAL DANISH GOVERNMENT

The Royal Danish Government is interested in the instant case because it involves a controversy between

[1] Section 33 of the Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 1007; Title 46, United States Code, § 688.

a Danish citizen seaman (the respondent) and a Danish ship owner (the petitioner), resulting from the seaman's injury aboard a vessel flying the Danish flag at a time when the vessel was moored in the harbor of Havana, Cuba (R. 16, 33-34). Moreover, the articles of agreement signed by petitioner and respondent provided that controversies arising thereunder should be decided "on the basis of regulations contained in the [Danish] Seaman's Law" (R. 45).[1]

Until the pending case arose, controversies of this nature between a Danish citizen seaman and the owner of a Danish vessel had traditionally been determined in accordance with Danish law under the long established international rule of comity that the flag of a vessel shall determine the law to be applied to matters concerning the internal economy and discipline of a ship. The decision of the court below would abrogate this rule of comity with the result that controversies of this nature would be settled in accordance with the municipal law of the country in which the articles of agreement were executed.

The Danish shipping industry has for decades been an important segment of the Danish economy. Generally, in view of Denmark's shortage of United States dollars in recent years, the dollar earnings of the Danish Merchant Marine have become even more significant to the economy of Denmark. Consequently, any change in the rule of comity which would be likely to result in increasing the United States dollar liability of Danish ship owners is a matter of interest not only

[1] See stipulation of counsel on English translation of portions of the articles, which stipulation was filed with this Court on November 24, 1952.

to Danish ship owners themselves but also to the Royal Danish Government.

Furthermore, pursuant to Danish law, a Danish seaman is entitled to file any claim arising out of personal injury directly with or through the appropriate Danish Consulate (R. 21). Consequently, if the rule of comity is abrogated, the Danish Consuls with whom such claims are filed will have additional burdens imposed upon them to ascertain in each case the country in which the particular seaman involved signed his shipping articles and whether such country still follows the rule of comity or the new principle established by this case. Any decision which results in the imposition of new responsibilities on Danish Consuls is a matter of interest to the Royal Danish Government.

The filing of this brief has been delayed because the Royal Danish Government, upon learning of the order of this Court granting writ of certiorari, felt it desirable to obtain the opinions of the Danish Shipping Administration, the Federation of Danish Ship Owners, and the Danish Seaman's Union before formulating its views.

ARGUMENT

At the outset, it should be noted that affirmance of the judgment below will necessarily result in the abrogation of a rule of comity which has been adhered to for decades by all of the maritime nations of the world.

This rule of comity was described by Judge Learned Hand, in his dissenting opinion in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, 139 (2d Cir. 1945), as "a well settled principle—a principle moreover which it seems to me desirable to preserve intact" and which he and Judge Swan described in *Taylor* v. *Atlantic*

Maritime Co., 179 F. 2d 597, 600 (2d Cir. 1950) as "the long settled international understanding that the law of the flag controls" in matters relating to the internal economy and discipline of a vessel. Because this rule of comity has been generally accepted by all maritime nations, it would seem appropriate to hold that it had been abrogated only if the competent authorities of the United States have manifested an intention so to do. Judge Hand, in his dissent in the *Kyriakos* case, *supra*, observed that courts of the United States should "demand the clearest warrant before we substitute the Jones Act—primarily at any rate a local statute—for the pertinent law of [the flag of the vessel]" (at p. 139).

According to petitioner, there is no clear expression of Congressional intent (Pet. Brief, pp. 6-26). And Judge Augustus Hand and Judge Learned Hand agree. Judge Augustus Hand, in his opinion in the *Kyriakos* case, *supra*, said (at p. 136):

> "We are thus called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters can sue under the Jones Act. Although the matter is doubtful we believe that he can."

In the *Taylor* case, *supra*, Judge Learned Hand said (at p. 600):

> "' . . . before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose."

No congressional "will to change" the rule can be inferred by reasoning that the purpose of the Jones Act is to benefit American seamen and that this purpose will be achieved if the rule of comity is abrogated and the law of the flag supplanted by the law of the country where a seaman happens to sign shipping articles. For the benefits to American seamen, as a practical matter, would be negligible. As Judge Hand pointed out in one of the two decisions relied upon to affirm the present ruling:[1]

> ". . . there will be, we should suppose, only rare occasions when American seamen will find themselves forced to accept the greatly inferior standards of wages and living which prevail on most, if not all, foreign ships."

On the other hand, adoption of the rule—that the law of the place where the contract was made shall govern in cases involving injuries to seamen aboard foreign vessels outside the territorial waters of the United States—may work serious hardship on some American seamen. For example, an American seaman may, through circumstances beyond his control, find himself stranded in a port of a foreign country whose maritime laws confer on seamen relatively few benefits. Regardless of the nationality of the vessel on which he may sign in order to return to the United States, affirmance of the decision below will mean that courts should apply the law of the country where the seaman joined the vessel, even though the law of the vessel's flag would be more favorable to him.

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[1] Taylor v. Atlantic Maritime Co., 179 F. 2d 597, 600 (2d Cir. 1950); *cert. denied*, 341 U.S. 915 (1951).

At the same time, moreover, the decision will give rise to discrimination amongst Danish seamen on Danish vessels. Under the rule that the law of the flag governs, all cases of personal injury to seamen aboard Danish vessels are determined in accordance with Danish law, regardless of where they may have signed their shipping articles. Thus, all seamen aboard Danish vessels have in the past been treated equally in such matters. If the rule of the decision below is adopted, the fortuitous circumstance of where a seaman signs on a Danish vessel will determine the law to be applied in the event that he is injured while serving on the vessel. Judge Learned Hand, in his dissenting opinion in the *Kyriakos* case, *supra*, said (at p. 139):

> "It is a hardship to owners, and it may be to seamen, to have their legal relations depend upon the accident of the port of call at which the ship puts in; it is impossible to adjust affairs to constantly shifting standards, some of which will favor one party, some another."

Any rule which requires the application of different legal standards to similar accidents occurring to seamen of equal rank on the same Danish vessel, depending upon where each seaman signed the shipping articles, will cause confusion and dissension within the crews of Danish vessels with attendant deterioration of their morale. At the same time, such a multiplicity of laws relating to injuries to seamen may subject Danish ship owners to additional liability and increased financial burden.

Under the present rule of comity whereby the law of the flag governs, both Danish ship owners and sea-

men are assured of one standard of rights and duties, regardless of the nationality of the seamen or the place where they may have joined the ship. If the decision below is affirmed, a Danish ship owner will be subject to varying standards of liability depending upon the law of the port where he engages his seamen, and both ship owners and seamen will be uncertain what their rights and duties are.

It is natural to expect that a Danish ship owner will prefer the standard of liability of Denmark, which standard he knows, understands and is required to support. Therefore, whenever possible, a Danish ship owner will employ his seamen in Denmark or in countries which allow the law of the flag to control the internal economy and discipline of his vessel. On the other hand, Danish seamen will be encouraged to sign shipping articles only in those countries whose laws are especially favorable to seamen. Conversely, a Danish ship owner will be reluctant to hire seamen while in such ports. This situation may result in the stranding of unemployed Danish seamen in American and other foreign ports with consequent ill effects to both Denmark and the country where the seamen are stranded. Precisely the same conflict of interest between ship owners and seamen who are nationals of other maritime nations will also arise with similar results.

CONCLUSION

The Royal Danish Government respectfully suggests that these considerations all indicate the undesirability of overturning the long established and internationally accepted rule of comity whereby the law of the flag governs the internal economy and discipline of a vessel,

and that the effect of the decision of the court below will work serious injury to Danish seamen and ship owners alike with no concomitant benefit to American seamen or ship owners.

Respectfully submitted,

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November 26, 1952